

MAR 18 2010

Serial No. 10/553,132

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Art Unit 2872

Reply to Advisory Action of March 12, 2010.Arguments

Applicant thanks the Supervisory Patent Examiner for his reference to MPEP 2141.01.

MPEP 2141.01 includes the following statement:

"Subject matter that is prior art under 35 U.S.C. 102 can be used to support a rejection under section 103."

An inventor's own work, therefore, may be used as prior art under 35 USC 103(a). The condition, however, is that the work also qualify as prior art under 35 USC 102.

Contrary to the Examiner, the Supervisory Patent Examiner seems to accept that US Pat. No. 5,864,428 does not qualify as prior art under 35 USC 102(b).

Applicant's argument therefore remains. US Pat. No. 5,864,428 may not be used as prior art against the claims of the pending application unless it can be shown that the work falls under one of the statutory categories of 35 USC 102.

Examiner/Supervisory Patent Examiner's reference to "the date requirement under 35 USC 102(b)" is only meaningful if US Pat. No. 5,864,428 qualifies as prior art as stated above.

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Regarding patent prosecution procedure, applicant may consult a patent attorney if this application proceeds to appeal. Applicant apologises for any mistakes made in prosecution.

Yours sincerely,

R.H.

Ray Hesline
INVENTOR